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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,093	12/28/2001	Ronald J. Lebel	047711-0278	3989

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EXAMINER	
NASSER, ROBERT L	

ART UNIT	PAPER NUMBER
3736	12

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/036,093	LEBEL ET AL.	
	Examiner	Art Unit	
	Robert L. Nasser	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15/2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *22 and 23* is/are allowed.

6)☒ Claim(s) *1-13, 17-21, 26-29, 32* is/are rejected.

7)☐ Claim(s) *14-16,24,25,30,31 and 33* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The use of the trademarks Dacron and Kevlar has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim 27 contains the trademark/trade names Kevlar and Dacron. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe the generic material for the core and, accordingly, the identification/description is indefinite.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 13, 21, 26 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Nagai 6,411,834. Nagai '834 shows a device having a sensor module 1, a cable 4, and a connector 22. The cable has a core formed by wires 4 and tube 5, and a first tubing 102, with a conductive element 101 wrapped around the core, where the conductive element 101 extends from the connector to the sensor module. Nagai further teaches the method of claim 21. The core is shock absorbing to some degree.

Claims 1, 2, 13, 21, and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Vogel et al. Vogel et al shows a sensing module the portion of the device including sensors 20 and 22 and spacer member 24, where the is a core 26 and 28 connected to the sensors and to the unidiametrical connector, where the wire 26 is helically wrapped around a substantial portion of the core wire.

Claims 1, 3, 6, 10, 11, 13, 21, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Schaenzer. Schaenzer shows a device including a sensor module 44, a cable running from the sensor 44 to connectors 30 and 36, where, as shown in figure 7, the cable has a core 176, a first tubing 170, a conductor helically wrapped about the core 176 , which connect from the distal sensor module to the proximal connector wires coiled around tubing 170, and a second tubing 168. The device is radio-opaque.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 4 and 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagai '834 in view of KenKnight et al. The tubing 5 on Nagai is made from nylon. KenKnight et al teaches that nylon and polyester are equivalent materials for body use in the body. Hence, it would have been obvious to modify Nagai to substitute polyester for nylon, as it is merely the substitution of one known material for another.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schaenzer in view of Yang et al. Yang et al is selected from a myriad references that teach using a ribbon cable when multiple conductors are arranged side by side. Therefore, it would have been obvious to modify Schaenzer et al to use a ribbon cable, as it is merely the substitution of one known equivalent wiring arrangement for another.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaenzer. With respect to claim 9, the examiner takes official notice that platinum is a known material for leads in a sensor. With respect to claims 7 and 8, the examiner notes that applicant has not stated that the method of attachment solves a stated problem or is for a particular purpose. In addition, applicant has not shown any unexpected results. Hence, it would have been obvious to weld the wires to the sensor and crimp them to the conductor, as it is merely a matter of design choice for one skilled in the art.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagai '834 in view of Nagai et al 6,143,150. Nagai '150 further shows a sensor structure for measuring the same parameters as the sensor of Nagai '834, with a second layer of tubing around a first layer, and a window in the second layer. Hence, it would have been obvious to modify Nagai '834 to use such a sensor, as it is merely the substitution of one known equivalent sensor for another.

Claims 17-20 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagai '834 in view of Ward et al. Nagai teaches that it is useable with electrochemical sensors. Ward et al shows a known electrochemical sensor having glucose oxidase and human serum albumin enzyme mixture, where the serum albumin is a protein matrix. Hence, it would have been obvious to modify the device of Nagai to use a sensor of Ward et al, as it is merely the substitution of one known equivalent sensor for another. With respect to claim 32, Ward has first and second spacing elements 112 and 114, where the first one has a floor that allows oxygen to pass.

Claims 22 and 23 are allowable

Claims 14-16, 24, 25, and 30-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 14-16, 24, and 25 define over the art of record in that, none of the art teaches the method of making encapsulating the sensor in beads, as claimed. Claims 30-31 and 33 define over the art of record in that none of the art shows the first and second spacer members, with the

second spacer member being removeable to leave a space in the second spacer to receive a catalyst.

Applicant's arguments filed 1/5/2004 have been fully considered but they are not persuasive.

Applicant's arguments with respect to Nagai '834 are deemed moot in view of the new grounds of rejection.

Applicant has asserted that the sensing module of Vogel is on the proximal end of the device. However, it is the examiner's opinion that the sensing module is located with elements from element 22 to the distal end of the device on the cover figure., which is clearly at the distal end.

Applicant has argued that the device of Schaenzer does not have a core and a conductive element, as the core is the conductive element. The examiner disagrees noting that element 174 is also a conductive element

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert L. Nasser
Primary Examiner
Art Unit 3736

RLN
April 4, 2004